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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,581	04/15/1999	ANSGAR DIRKMANN	P99.0498	2526

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05/28/2004

Brett C Martin  
1650 Tysons Boulevard  
McLean, VA 22102

EXAMINER
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MEHRA, INDER P

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 05/28/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/284,581

**Applicant(s)**

DIRKMANN ET AL.

**Examiner**

Inder P Mehra

**Art Unit**

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 3/22/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Response to Amendment***

1. This is in response to an Response for Reconsideration dated 3/22/04 which has been fully considered and made of record. Based on this amendment, claims and have been amended. Claim has been added. Claims are now pending. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL. See MPEP § 706.07(a).**

**Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-7, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by **Backaus et al** (US Patent No. 5,444,713), hereinafter, Backaus.

For claims 6, and 10-11 Backaus discloses, in reference to figs. 1 and 2, a method for controlling connections in a communication network (information services systems ISDN , col. 1 lines 45-50, which processes information requests, including switch 108, fig. 1, which controls communication ISP (either with voice response unit (VRU 110 ) or (IP units 118 and 120), fig.

1); comprising the steps of:

- setting up a signaling connection between a subscriber of the communication network (100 fig. 1) and a service access system (information retrieval network including ISP 106, fig. 1) based on a service connection request by the subscriber 100;

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- intermittently (VRU may remain bridged to subscriber or may drop from connection) setting up a payload connection (B-channel) associated with the signaling connection (application specific, col. 2 lines 3-5, call associated signaling, col. 5 lines 30-35) , (D-channel signaling)-----only when there is data traffic for a service (at the same time , ISP communicates with an information source over a different channel (B-channel), refer to col. 1 line 60- col. 2 line 8;

Further, intermittent nature of connection is disclosed by Backaus in col. 5 lines 20-25, where the subscriber 100 can signal the IP units 118 and 120 to *pause, repeat an entire data element, repeat a selected portion of an element or terminate the information presentation and return control to VRU 110, which serves signaling function or making connection, refer to col. 5 lines 20-25.*

wherein the signaling connection and the payload connection are maintained simultaneously during the data transmission (VRU 110 maintains the B-channel connection with subscriber establishes new connection with IP unit 120, refer to col. 5 lines 5-10).

For claim 7, Backaus discloses, “wherein the service is at least one of a voice or a data service” (voice response unit (VRU 110) and information processing units 118 and 120 in fig. 1).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-9, 12-13, 14-15 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Backaus**, as applied to claims 6, 10 and 11 above, in view of **Sistanizadeh et al** (US Patent No. 6,452,925, hereinafter, Sistanizadeh).

For claims 8 and 14, Backaus discloses all the limitations of subject matter, including “charging a service by the communication network for a time interval in which the signaling connection and the payload connection simultaneously exist fir the service” (number of minutes of service provided, and special billing rates, refer to col. 3 lines 23-35);

Sistanizadeh discloses more expressly, “the user starts an application and PC requests for a certain server--- (setting up a payload connection); and PC requests and receives information (data traffic), refer to col. 13 lines 5-10; further, discloses billing may be based on occupancy which is the time the user is utilizing a network channel; charging a service ---for a time interval in which the signaling connection and the payload connection simultaneously exist), refer to col. 17 lines 15-16; further discloses charging the customer when the assigning of an IP address starts the clock, and tolling of the charge ceases when IP address is released (charging for service by the service provider for each time interval---, as recited by claim 14) , refer to col. 11 lines 23-26.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the capability of both signaling connection and payload connection being maintained simultaneously during the data transmission and charged for use of time interval, as taught by Sistanizadeh. The maintenance of both the connections (signaling and data communication) can be implemented by combining the system as taught by Sistanizadeh at the billing data collector. The suggestion/motivation to do so would have been to use D-channel

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packet switching capability for this kind of services and to send data over B-channel simultaneously.

For claims 9 and 15, Backaus discloses all the limitations of subject matter including, “the step of clearing down the payload connection after the end of data transmission, as recited by claim 15” (tear down, refer to col. 5 lines 4-6), and when the time interval has been charged (number of minutes of service provided, and special billing rates, refer to col. 3 lines 23-35);

Backaus does not disclose expressly, “the clearing down the payload connection does not occur immediately after the end of data transmission but occurs immediately before the expiration of the time interval already charged”, as taught by claim 9;

Sistanizadeh discloses, if the user desires to terminate prior to the termination of 100% time of the lease time, DHCPRELEASE request is performed from the bound condition to initialize to cancel the lease, refer to col. 14 lines 18-21; further discloses, in reference to fig. 9, bound stage persists (data transmission persists) as long as 87.5% of lease time has expired, refer to col. 14 lines 10; in the absence of acknowledgment to continue transmission, the pc is forced to go off line (clearing down the payload connection before the expiry of total lease time charged, as recited in claim 15), refer to col. 14 lines 3-12.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the capability of charging for use of time interval, as taught by Sistanizadeh. The capability of charging for the time interval and tearing down before the expiry of communication can be implemented by combining the system as taught by Sistanizadeh at the billing data collector. The suggestion/motivation to do so would have been to use D-channel packet

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switching capability for this kind of services and to send data over B-channel simultaneously and charge for the time of usage of system.

For claims 12 and 13, Backaus discloses the following limitations:

- wherein the first connection is to a point of presence server of an Internet service over a D-channel”, as taught by claim 12, refer to channels 105 (D channel, col. 2 lines 2 and 33-40);
- “wherein the second connection is a B-channel connection”, as recited by claim 13, refer to channels 105 (B-channel, col. 2 lines 2 and lines 35-40.

For claims 16-18, Backaus discloses all the limitations of subject matter including the limitations, “wherein intermittently setting up of the payload connection occurs only given data traffic”, as taught by claims 16-18 (intermittent nature of connection is disclosed by Backaus in col. 5 lines 20-25, where the subscriber 100 can signal the IP units 118 and 120 to *pause, repeat an entire data element, repeat a selected portion of an element or terminate the information presentation and return control to VRU 110, which serves signaling function or making connection, refer to col. 5 lines 20-25.*

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 6-18 have been considered, but they are not persuasive.

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Applicant argues that all connections between the subscriber and the information retrieval system occur over B-channel. Further Backaus is not directed to a system for maintaining two connections with the subscriber.

In response, it is stated that Backaus maintains two channels in channel 105 in fig. 1, which “illustratively comprise *23 ISDN B-channels and one ISDN D-channel*, refer to col. 2 lines 35-37.

Further, data is transmitted between the subscriber, the information service provider, and the information sources using B-channel, ISDN D-channel signaling is used during a call as a form of temporary, *out of band (SS7) signaling to pass instructions for application specific purposes-----without interrupting data delivery to the subscriber*, refer to col. 1 line 66 through col. 2 line 8. Out-of-band signaling allows concurrent processing – information service provider communicates with the subscriber over one channel while, at the same time, the information service provider communicates with an information source *over a different channel*, refer to col. 1 lines 60-65. *Call set up and information request are processed using a channel other than the channel which carries data between the information service provider, information source and the subscriber, refer to col. 1 lines 57-61.*

*In the light of above explanation, arguments by the applicant are not persuasive.*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Conclusion*

8. Any enquiry concerning this communication should be directed to Inder Mehra whose telephone number is (703) 305-1985. The examiner can be normally reached on Monday through Friday from 8:30AM to 5:00 PM.

If attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Seema Rao, can be reached on (703) 308-5463. Any enquiry of a general nature of relating to the status of this application or processing should be directed to the group receptionist whose telephone number is (703) 305-4700.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, DC. 20231

Or faxed to (703) 872-9314.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal drive, Arlington, VA, sixth floor (Receptionist).

  
Inder Mehra

May 18, 2004

  
DANG TON  
PRIMARY EXAMINER